



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 10-8

April 23, 2012

Petition of Comcast Cable Communications, Inc. to establish and adjust the basic service tier programming, equipment, and installation rates for the communities in Massachusetts served by Comcast Cable Communications, Inc. that are currently subject to rate regulation.

ORDER ON RECONSIDERATION

APPEARANCES:

Warren Fitting
Comcast Cable Communications, LLC
One Comcast Center, 48th Floor
Philadelphia, PA 19103

- and -

Mark Renaud
Comcast – North Central Division
676 Island Pond Road
Manchester, NH 03109

- and -

Steven J. Horvitz, Esq.
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, N.W. Suite 200
Washington, DC 20006-3402
FOR: Comcast Cable Communications, Inc.
Petitioner

INTERVENORS

John J. Clorite, Jr.
Chairman, Somerset Cable Advisory Board
145 Winward Drive
Somerset, MA 02726
FOR: Town of Somerset

William August, Esq.
Epstein and August
101 Arch Street, 9th Floor
Boston, MA 02110

-and-

Chairman
Board of Selectmen
Weymouth Town Hall
75 Middle St.
Weymouth MA 02189
FOR: Town of Weymouth

Nancy E. Glowa, Esq.
City of Cambridge Law Department
City Hall, 795 Massachusetts Avenue
Cambridge, MA 02139

-and-

William Hewig, III, Esq.
Kopelman and Paige, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110-1109
FOR: City of Cambridge

I. INTRODUCTION

On February 9, 2012, Comcast Cable Communications, Inc. (“Comcast”) filed a Motion for Partial Reconsideration (“Motion”) in which it requested the Massachusetts Department of Telecommunications and Cable (“Department”) to partially reconsider its Rate Order of January 27, 2012. In its Rate Order, the Department, *inter alia*, found that Comcast had overcharged certain subscribers for a period beginning on April 1, 2011, and directed Comcast to refund the amount overcharged to affected subscribers in the form of a bill credit. Rate Order at 6. Comcast’s Motion notes that the period of overcharges began on May 1, 2011 and not April 1, 2011, and asks that the Department modify its Rate Order accordingly. Motion at 2. Comcast also asks that the Department permit it to refund the overcharges through its true-up mechanism instead of a bill credit. *Id.* at 2-3. For the reasons discussed below, the Department grants Comcast’s Motion.

II. PROCEDURAL HISTORY

On February 1, 2011, Comcast filed Federal Communications Commission (“FCC”) Forms 1240 with the Department that proposed basic service tier (“BST”) maximum permitted rates (“MPR”) for its 128 regulated Massachusetts communities. Aug. 3, 2011 Hearing Transcript at 3:14-3:18. In conjunction with its FCC Form 1240 filings, Comcast also filed a FCC Form 1205 that proposed equipment and installation rates.¹ *Id.* Pursuant to FCC regulations, Comcast’s proposed BST and equipment and installation rates became effective on May 1, 2011. *See* 47 C.F.R. § 76.933(g); Exs. Comcast-1 through Comcast-129. Comcast submitted on July 7, 2011, a revised FCC Form 1205 that contained adjustments specific to its

¹ Citations to Comcast’s FCC Forms 1240 and 1205, and amendments thereto, are to “Ex. Comcast-1,” *et seq.* Citations to the Department’s First Set of Information Requests and Comcast’s responses thereto are to “Ex. DTC-Comcast-1,” *et seq.* Citations to the exhibits in support of Comcast’s responses to the Department’s information requests are to “Ex. IR-1,” *et seq.* Citations to Comcast’s responses to record requests issued at the evidentiary hearing are to “RR-1,” *et seq.*

regulated Massachusetts communities. Ex. IR-44. Additionally, Comcast filed revised Forms 1240 on October 19, 2011 that adjusted the calculation of retransmission consent fees. RR-5.

On January 27, 2012, the Department approved Comcast's Form 1205, as amended, and Comcast's Forms 1240, as amended. Rate Order at 8-9. The Department found, in part, that the recalculation of retransmission consent fees resulted in reductions to Comcast's MPR, producing amended MPRs that are below the operator selected rates ("OSR") in 23 communities. *Id.* Accordingly, the Department directed Comcast to refund all affected subscribers the amount overcharged in the form of a subscriber bill credit, for the period beginning April 1, 2011. *Id.* at 6.

On February 9, 2012, Comcast filed this Motion. In support of its Motion, Comcast submitted supplemental materials on February 29, 2012 ("Motion Supplement").

III. ANALYSIS AND FINDINGS

A. Standard of Review for Reconsideration Motions

The Department grants motions for reconsideration only when required to do so by extraordinary circumstances. *See Investigation by the Dep't, on its own motion, into the calculation & allocation of margins derived from the Gas Serv. Agreement between N. Attleboro Gas Co. & Metalor USA Ref. Corp*, D.P.U. 94-130-B, Order on Motion By N. Attleboro Gas Co. for Clarification & Reconsideration, at 2 (Sept. 15, 1995) ("*N. Attleboro Gas*"); *Investigation by the Dep't into the propriety of the cost studies filed by New England Tel. & Tel. Co. on Apr. 18, 1986, pursuant to the Dep't's Orders in D.P.U. 1731*, D.P.U. 86-33-J, Order on Motions for Recalculation & Reconsideration, at 2 (June 23, 1989) ("*New England Tel. & Tel.*"). What constitutes "extraordinary circumstances" is determined by the Department on the facts in a case-by-case basis, and the burden is on the party seeking reconsideration to demonstrate such

circumstances. *E.g.*, *Fitchburg Gas & Elec. Light Co.*, D.T.E. 98-51-A, at 5-6 (1999); *N. Attleboro Gas Co.*, D.P.U. 94-130-B, at 2 (1995). In those instances, the Department takes a “fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation.” *See N. Attleboro Gas*, D.P.U. 94-130-B, Order at 2; *New England Tel. & Tel.*, D.P.U. 86-33-J, Order at 2. One example of an “extraordinary circumstance” is when the Department’s treatment of an issue was the result of clear error. *Investigation by the Dep’t on its own motion as to the propriety of the recovery by Mass. Elec. Co. of additional Conservation & Load Mgmt. charges in 1991 through a new standard fuel clause*, M.D.P.U. 797, D.P.U. 90-261-B, at 7 (Feb. 7, 1991); *New England Tel. & Tel.* D.P.U. 86-33-J, Order at 2.

In its Rate Order, the Department incorrectly directed Comcast to refund overcharges starting in April 2011, a month before the overcharges started accruing. This inadvertence falls squarely within the standard justifying the Department’s reconsideration. *New England Tel. & Tel.* D.P.U. 86-33-J, Order at 2. In taking a fresh look at the record to substantively modify its decision, it is also appropriate to reconsider the mechanism by which the overcharges will be refunded if, as here, doing so will not prejudice the affected subscribers.

A. Effective Date of the Overcharges

The Rate Order noted that Comcast’s proposed BST and equipment and installation rates became effective on May 1, 2011. Rate Order at 1. The Rate Order, however, then directed “Comcast to refund all affected subscribers the amount overcharged, in the form of a subscriber bill credit, for the period beginning April 1, 2011.” *Id.* at 6. Accordingly, the Department corrects this discrepancy and revises the beginning date of the regulated rate period to May 1, 2011.

B. Mechanism for Returning Overcharges

In its Rate Order, the Department directed Comcast to refund the overcharges to affected subscribers in the form of a one-time subscriber bill credit. *Id.* at 6, 8-9. Comcast states that the Department did not consider the interplay between the small subscriber credits required under the Rate Order and the “true-up” mechanism included in Comcast’s 2012 Form 1240 filings. Motion at 1. Comcast states that requiring it to issue a one-time subscriber credit would be unduly burdensome without any offsetting benefits for consumers. *Id.* at 2. Comcast instead proposes to refund the overcharges to consumers through the true-up mechanism built into the Forms 1240. *Id.* at 2-3.

Comcast, in preparing for its annual rate adjustment and review prior to the release of the Rate Order, completed Forms 1240 for the 2012 rate period with MPRs that true-up the overcharges identified in the Rate Order. *Id.* at 3. Comcast states that if one-time subscriber credits are issued, the Company would also have the burden of re-calculating 2012 MPRs that are not adjusted by the true-up related to the overcharges. Motion Supplement at 1. Comcast states that the recalculation of the MPRs would have the effect of increasing Comcast’s proposed 2012 MPRs for the affected communities. *Id.* In addition, Comcast notes that by using the true-up mechanism, the overcharges will be subject to an 11.25% interest rate, which far exceeds the applicable rate that would apply to the overcharges refunded in a one-time credit, thus giving consumers a greater benefit. Motion at 4. Finally, Comcast notes that rates were reduced in the affected 23 communities to eliminate the collection of overcharges as of February 1, 2012. *Id.* at 3. Therefore, the calculation of overcharges will be a nine month period from May 1, 2011 through January 31, 2012. This time period results in overcharges of \$0.18 for over half of the

affected communities; six communities with overcharges of \$1.00; and a maximum overcharge of \$3.60 in one community.

The rate adjustments submitted on October 19, 2011 corrected the methodology that was employed in the preparation of the rate forms used in the prior rate proceeding. RR-5.

Normally, when prior rates are adjusted, refunds or bill credits are necessary since the true-up mechanism can only be used once and will not correct rates that have already been trued-up.

FCC Instructions for FCC Form 1240 Annual Updating of Maximum Permitted Rates Regulated Cable Services, at 2. In the present case, Comcast, on its own initiative, adjusted the 2010 Forms 1240 to re-calculate the rate using the methodology employed for the adjustment submitted on October 19, 2011. The recalculation of the 2010 Forms 1240 allowed Comcast to calculate rates in this proceeding correctly. Therefore, the sole focus of this order is the amended 2011 rates.

While the overcharges occurred over the projected rate period, the true-up of the nine months of overcharges will occur over the two subsequent projected periods. The first six months, May 2011 through October 2011, will be trued-up in the next projected period. The remaining months, November 2011 through January 2012, will be trued-up in the subsequent projected period.

The Department finds that allowing Comcast to refund overcharges to subscribers through the true-up mechanism will properly refund the overcharges to subscribers without an attendant undue burden. Therefore, the Department grants Comcast's request to refund the overcharges for the period from May 1, 2011 through January 31, 2012 through the rate true-up mechanism.

IV. CONCLUSION

The Department concludes that May 1, 2011 is the effective date for determining the overcharges. The Department agrees that the true-up mechanism is an appropriate method for refunding the overcharges related to the 2011 FCC Form 1240 filings. Accordingly, the Department grants Comcast's Motion. Comcast shall refund the overcharges through its true-up mechanism, pursuant to the findings contained herein.

V. ORDER

Accordingly, after consideration, it is

ORDERED: That the Motion for Partial Reconsideration submitted by Comcast on January 27, 2012 is GRANTED; and it is

FURTHER ORDERED: That the effective date for directing Comcast to refund all affected subscribers the amount overcharged in the Rate Order is amended to May 1, 2011; and it is

FURTHER ORDERED: That Comcast is to provide the refund due subscribers identified in the Rate Order through the true-up calculation included in Comcast's Form 1240 filings; and it is

FURTHER ORDERED: That Comcast comply with all other directives herein.

By Order of the Department:

/s/ Geoffrey G. Why
Geoffrey G. Why
Commissioner

RIGHT OF APPEAL

Appeals of any final decision, order or ruling of the Department of Telecommunications and Cable may be brought pursuant to applicable federal and state laws.